A

Ahmad Jamaluddin Abd Majid v Rafidah bt Aziz & Ors

HIGH COURT (TAIPING) — ELECTION PETITION NO 26–02 OF 2008

B

ZAKARIA SAM J

15 OCTOBER 2008

C *Election — Election court — Nature of — Judge — Jurisdiction — Whether election judge empowered to declare unsuccessful candidate as duly returned — Whether prayer was for a scrutiny under the Election Offences Act 1954 s 35(d)*

D *Election — Objections — Nomination papers — Candidate filing two unsigned copies of nomination papers — Whether failure to sign merely a technical defect and of no consequence — Elections (Conduct of Elections) Regulations 1981 reg 4(3), (5) & (6)*

E

Election — Petition — Presentation of — Matters that petitioner must satisfy in order to sustain petition — Requirements of s 32(b), whether satisfied — Election Offences Act 1954 s 32(b) — Elections (Conduct of Elections) Regulations 1981 reg 7(1), (4), (5) — Failure to show nexus between complaints raised and law alleged to have been transgressed

F

The first respondent submitted her nomination papers in triplicate to the returning officer ('second respondent') for the Parliamentary constituency of

G P67 Kuala Kangsar, Perak as required by reg 4(3) of the Elections (Conduct of Elections) Regulations 1981 ('the Regulations'). The petitioner filed this petition under reg 7 raising three objections, namely: (a) that the first respondent contravened reg 4(3) and 4(5) when she failed to sign the two copies of the nomination paper submitted to the returning officer ('para 4.1');

H (b) that the second respondent contravened reg 4(6) by failing to use his powers to reject the nomination paper due to the failure to sign the two copies ('para 4.2'); and (c) that the second respondent contravened reg 7(3) by failing to make an objection to the nomination paper and reg 7(4) by failing to provide grounds for rejecting the petitioner's objection on the said

I point ('para 4.3'). The second respondent had overruled the petitioner's objections and declared an election to be contested between the first respondent and Dr Hj Khairuddin wherein the first respondent was returned. The petitioner prayed for declarations that the election of the first respondent was void and that Dr Hj Khairuddin ought to have been returned. The

second and third respondents filed this motion praying that the petition be struck out on the grounds that: (i) the petition was defective for failure to comply with r 4(1)(b) of the Election Petition Rules 1954 ('the Rules') in that the facts and grounds stated were unable to sustain the prayers sought; or (ii) the petition did not disclose any cause of action or was 'frivolous and vexatious' or was 'an abuse of the court's process'.

Held, dismissing the petition with no order as to costs:

(1) The signature of the first respondent on the first copy expressly signified her intention to accept the nomination. The fact that the first respondent came personally to submit her nomination papers along with her proposer and seconder also expressly signified her intention to accept the nomination to contest as a candidate for the constituency. The second respondent could look at the nomination paper that was correctly filled up to identify the defect and determine whether the defect was substantial in nature. The second respondent found the defect to be merely technical and of no consequence (see paras 13–14).

(2) Even assuming the second respondent had wrongfully accepted the nomination papers, such non-compliance would not affect the election result. Therefore the requirements of s 32(b) of the Election Offences Act 1954 ('the Act') would not be satisfied (see para 18).

(3) The ground stated in para 4.1 did not fall within reg 7(1)(c) and 7(1)(d) since both the regulations refer to the status of the candidate and not the status of a nomination paper. There was no allegation that the first respondent was not eligible to be a member of the Dewan Rakyat (see para 22).

(4) Regulation 7(1) and 7(5) read with s 32(b) of the Act contemplate that there was an objection raised that came within the ambit of reg 7(1) and that the second respondent made a decision overruling the objection and in doing so did not comply with a provision of law relating to nomination paper. In relation to the grounds in para 4.2 the petitioner failed to highlight any of these requirements (see paras 23–24).

(5) As or the ground in para 4.3 the petitioner did not state under which law the second respondent had to prepare a written decision and written grounds for the decision (see para 26).

(6) Both the complaints in paras 4.2 and 4.3 did not fall within any of the paragraphs in reg 7(1). Regulation 7(1) is exhaustive and the petitioner cannot create new grounds not provided. The petitioner also failed to bring his factual situation under reg 7(5) which refers to decisions by the returning officer in rejecting or accepting objections. Therefore the

petitioner failed to show a nexus between his narrated facts and the provisions of law he alleged were transgressed. As such there was a failure to satisfy s 32(b) of the Act and consequently r 4(1)(b) (see para 27).

(7) The election judge no longer has the jurisdiction to declare an unsuccessful candidate as duly returned unless the prayer is for a scrutiny under s 35(d) of the Act. In this case the petitioner was not asking for a scrutiny (see para 30).

[Bahasa Malaysia summary

Responden pertama menyerahkan kertas pencalonannya dalam tiga salinan kepada pegawai pengurus (responden kedua) bagi bahagian pilihan raya Parlimen P67 Kuala Kangsar, Perak seperti yang dikehendaki oleh peraturan 4(3) Peraturan-Peraturan Pilihan Raya (Perjalanan Pilihan Raya) 1981 ('Peraturan tersebut'). Pempetisyen memfailkan petisyen ini di bawah peraturan 7 membangkitkan tiga bantahan, iaitu: (a) responden pertama melanggar peraturan 4(3) dan 4(5) apabila dia gagal menandatangani dua salinan kertas pencalonan yang diserahkan kepada pegawai pengurus ('perenggan 4.1'); (b) bahawa responden kedua melanggar peraturan 4(6) kerana gagal menggunakan kuasanya untuk menolak kertas pencalonan tersebut atas sebab dua salinannya tidak ditandatangani ('perenggan 4.2'); dan (c) bahawa responden kedua melanggar peraturan 7(3) kerana gagal membuat bantahan atas kertas pencalonan tersebut dan peraturan 7(4) kerana gagal memberikan alasan-alasan menolak bantahan pempetisyen terhadap isu tersebut ('perenggan 4.3'). Responden kedua menolak bantahan-bantahan pempetisyen dan mengisytiharkan suatu pilihan raya akan diadakan antara responden pertama dan Dr Hj Khairuddin di mana responden pertama dipilih. Pempetisyen memohon untuk perisytiharan-perisytiharan bahawa pemilihan responden pertama tidak sah dan bahawa Dr Hj Khairuddin yang sepatutnya dipilih. Responden kedua dan ketiga memfailkan usul ini memohon bahawa petisyen tersebut ditolak atas alasan-alasan bahawa: (a) petisyen tersebut adalah cacat kerana gagal mematuhi k 4(1)(b) Peraturan-Peraturan Petisyen Pilihan Raya 1954 ('Peraturan Petisyen tersebut') yang mana fakta-fakta dan alasan-alasan yang dinyatakan tidak dapat mengekalkan permohonan-permohonan yang dipohon; atau merupakan 'an abuse of the court's process'.

Diputuskan, menolak petisyen tanpa perintah untuk kos:

(1) Tandatangan responden pertama di atas salinan pertama jelas menunjukkan penerimaannya terhadap pencalonan tersebut. Fakta bahawa responden pertama menyerahkan borang pencalonannya

dengan sendiri bersama dengan pencadang dan penyokongnya juga jelas menunjukkan akan niatnya untuk menerima pencalonan untuk bertanding sebagai calon bagi bahagian pilihan raya tersebut. Responden kedua boleh melihat kertas pencalonan tersebut yang telah diisi dengan betul untuk mengenalpasti kecacatan tersebut dan menentukan sama ada kecacatan tersebut bersifat substansial (lihat perenggan 13–14).

(2) Walaupun dengan menganggap bahawa responden kedua telah silap menerima kertas-kertas pencalonan tersebut, ketidakpatuhan sebegitu tidak memberi kesan ke atas keputusan pilihan raya tersebut. Oleh itu, kehendak-kehendak s 32(b) Akta Kesalahan-Kesalahan Pilihanraya 1954 ('Akta tersebut') tidak dipenuhi (lihat perenggan 18).

(3) Alasan yang dinyatakan dalam perenggan 4.1 tidak terangkum dalam peraturan 7(1)(c) dan (d) dan kedua-dua peraturan merujuk kepada status calon, bukannya status kertas pencalonan. Tiada dakwaan bahawa responden pertama tidak layak menjadi ahli Dewan Rakyat (lihat perenggan 22).

(4) Peraturan 7(1) dan (5) dibaca bersama s 32(b) Akta mempertimbangkan bahawa wujudnya bantahan dalam ruang lingkup peraturan 7(1) dan bahawa responden kedua telah membuat keputusan yang menolak bantahan tersebut dan dalam berbuat demikian, tidak mematuhi peruntukan perundangan berkaitan kertas pencalonan. Berikutan dengan alasan-alasan dalam perenggan 4.2, pempetisyen gagal menekankan keperluan-keperluan tersebut (lihat perenggan 23–24).

(5) Berkenaan alasan dalam perenggan 4.3 pempetisyen tidak menyatakan undang-undang mana yang menyatakan bahawa responden kedua perlu menyediakan keputusan dan alasan bertulis bagi keputusan tersebut (lihat perenggan 26).

(6) Kedua-dua aduan dalam perenggan 4.2 dan 4.3 tidak terangkum dalam mana-mana perenggan dalam peraturan 7. Peraturan 7(1) adalah menyeluruh dan pempetisyen tidak boleh mencipta alasan-alasan baru yang tidak diperuntukkan. Pempetisyen juga gagal membuktikan keadaan faktualnya di bawah peraturan 7(5) yang merujuk kepada keputusan-keputusan oleh pegawai pengurus dalam menolak atau menerima bantahan-bantahan. Oleh itu, pempetisyen gagal menunjukkan hubungan antara fakta-fakta yang dinyatakannya dan juga peruntukan undang-undang yang didakwa telah dilanggar. Maka, s 32(b) Akta gagal dipenuhi dan begitu juga dengan k 4(1)(b) (lihat perenggan 27).

(7) Hakim pilihan raya tidak lagi mempunyai bidang kuasa untuk mengisytiharkan seorang calon yang tidak berjaya dalam pilihan raya

A sebagai telah dipilih kecuali permohonan tersebut adalah untuk penelitian di bawah s 35(d) Akta. Dalam kes ini pempetisyen tidak meminta untuk suatu penelitian (lihat perenggan 30).]

Notes

B For a case on nature of election court, see 6 *Mallal's Digest* (4th Ed, 2007 Reissue) para 1974.

For a case on nomination papers, see 6 *Mallal's Digest* (4th Ed, 2007 Reissue) para 1980.

C For a case on presentation of petition, see 6 *Mallal's Digest* (4th Ed, 2007 Reissue) para 2049.

Cases referred to

Gan Joon Zin v Fong Kui Lun & Ors [2004] 4 CLJ 729, FC (refd)

D *Hussein bin Ahmad v Tengku Razaleigh bin Tengku Mohd Hamzah & 3 Ors* Kota Bharu High Court Election Petition No 33–6 of 1995 (unreported); [1995] Case No 92, Tunku Sofiah's Malaysia Election Law 1550, HC (refd)

E *Isahak Hamid v Mustapha* [1965] 2 MLJ 18, HC (folld)

Norbert Choong Kai Chong & Anor v Mohamed Idris bin Hj Ibrahim & Anor [1980] 1 MLJ 316, HC (refd)

Sulaiman bin Pengiran Atok v The Sabah State Election Officer & 2 Ors (1999) (Case No 114 Tunku Sofiah's Malaysia Election Laws) 1892 (refd)

F *Wong Chong Sang v Nga Kor Ming & 2 Ors* (Civil Appeal No 01–24 of 2004(A)) (unreported), FC (refd)

Legislation referred to

G Elections (Conduct of Elections) Regulations 1981 reg 4(3), (4), (5), (6), 7, 7(1)(c), (d), (3), (4), (5), 28, 30(1)
Election Offences Act 1954 ss 32(b), 35, 35(c), (d)
Election Petition Rules 1954 rr 4(1)(b), (3), 15, 15(1), (1)(a)
Federal Constitution arts 47, 48

H *Mohd Arif bin Yusoff (Mohd Hanifa bin Maidin, Aminudin Zulkifli, Zulqarnain bin Lukman, Hisham bin Fauzi, Nasrul bin Mohamad, Hatman bin Abdullah, Mohd Abdul Rashid bin Yah and Zulmi bin Sabri with him) (Zainal Rijal Talha & Amir) for the petitioner.*

I *Firoz Hussein (Mohd Hafarizam Harun, Syed Faisal Syed Abdullah, Abu Bakar As-Sidek, Badrul Hishah Abd Wahab, and Mohd Adli Ithnin with him) (Ong Hanim & Badrul) for the first respondent.*

Amarjeet Singh SFC (Siti Salwa bt Musa, SFC, Andi Razali Jaya A Dadi, FC, and Nurul Farhana Khalid with him) (Attorney General's Chambers) for the second and third respondents.

Zakaria Sam J:

THE UNDISPUTED FACTS

[1] On 24 February 2008 the first respondent submitted her nomination papers in triplicate to the returning officer (second respondent) for the parliamentary constituency of P67 Kuala Kangsar, Perak as required by reg 4(3) of the Elections (Conduct of Elections) Regulations 1981 (hereinafter all regulations stated refer to this Regulations).

THE ELECTION PETITION

[2] The petitioner filed this petition under reg 7 raising a total of three objections, namely:

(a) In para 4.1 — that the first respondent contravened reg 4(3) and 4(5) when she failed to sign the two copies of the nomination paper submitted to the returning officer.

(b) In para 4.2 — that the second respondent contravened reg 4(6) by failing to use his powers to reject the nomination paper based on the failure of the first respondent to sign two out of the three copies of the nomination paper;

(c) In para 4.3 — that the second respondent contravened reg 7(3) by failing to make an objection to the nomination paper of the first respondent and reg 7(4) by failing to provide grounds for rejecting the petitioner's objection on the said point,

therefore the nomination papers of the first respondent ought to have been rejected on nomination day and no contest should have been declared by the second respondent. He claims that the matter can be rectified if the election court uses its inherent powers to declare Dr Haji Khairuddin bin Dato' Haji Abdul Malik as duly elected or ought to have been returned and towards that objective prays for the following reliefs:

(i) a declaration that the election of the first respondent is void;

(ii) a declaration that the first respondent was not duly elected or ought not to have been returned; and

(iii) a declaration that Dr Haji Khairuddin bin Dato' Haji Abdul Malik was duly elected or ought to have been returned.

[3] The second respondent overruled all the objections and declared an election to be contested between the first respondent and Dr Haji Khairuddin bin Dato' Haji Abdul Malik.

[4] In that election, the first respondent was returned with a majority of 1458 notes.

THE NOTICE OF MOTION BY THE SECOND AND THIRD RESPONDENTS

[5] The second and third respondents filed this motion praying that this petition be struck out with costs on the following grounds:

(a) That the petition is defective for failure to comply with r 4(1)(b) of the Election Petition Rules 1954 (hereinafter all rules stated refer to this rules) in that the facts and grounds stated are unable to sustain the prayers sought; or

(b) That the petition does not disclose any cause of action or is 'frivolous and vexatious' or is 'an abuse of the court's process'.

THE PRELIMINARY OBJECTION BY THE FIRST RESPONDENT

[6] The first respondent on the other hand filed a notice of preliminary objection (L13) raising three issues:

(i) Pempetisyen telah gagal mematuhi kehendak kaedah 15 Kaedah-Kaedah Petisyen Pilihanraya 1954 berdasarkan alasan-alasan bahawa notis pengemukaan petisyen dan petisyen dengan sengaja tidak diserahkan oleh Pempetisyen dalam tempoh 15 hari dari tarikh pemfailan Petisyen;

(ii) Pempetisyen telah gagal mematuhi kehendak kaedah 4(c) Kaedah-kaedah Petisyen Pilihanraya 1954 berdasarkan alasan bahawa petisyen tersebut tidak berasaskan kerana mana-mana alasan sepertimana yang diperuntukkan oleh s 32 Akta Kesalahan Pilihan Raya 1954 (Akta 5).

(iii) Pempetisyen telah gagal untuk menunjukkan bagaimana ketidakpatuhan peruntukan mana-mana undang-undang bertulis yang berhubungan dengan perjalanan mana-mana pilihan raya telah menjejaskan keputusan pilihan raya sepertimana yang diperuntukkan di bawah Seksyen 32(b) Akta kesalahan Pilihan Raya 1954.

[7] Since both the above (ii) and (iii) issues are similar to the motion filed by the second and third respondents, I would deal with these issues together first. The first ground of the preliminary objection is to be dealt with

separately later.

FINDINGS

[8] To support the contention in para 4.1 that the first respondent contravened reg 4(3) and 4(5) when the first respondent failed to sign the two copies of the nomination paper submitted to the second respondent, learned counsel for the petitioner cited the case of *Norbert Choong Kai Chong & Anor v Mohamed Idris bin Hj Ibrahim & Anor* [1980] 1 MLJ 316, where Harun J (as he then was) held that (at p 321):

> The fact that one copy of the nomination paper had been completely filled up does not validate the other two copies because reg 4(2) requires nomination papers to be submitted in triplicate. Further the same regulation provides 'Each nomination paper shall be signed …' which means that every copy of the nomination paper must comply with the regulations. The electors of the constituency who were at the foyer outside the town hall and in the nomination centre must be able to test whether the electors named in the nomination papers are qualified to assent. I further find that the omission is not an inaccurate description which can be cured by reg 28: *Baldwin & Ors v Ellis & Ors*, I therefore hold that the returning officer was right in rejecting the nomination papers of the petitioner on this ground.

[9] The answer to the above contention could be found in *Sulaiman bin Pengiran Atok v The Sabah State Election Officer & 2 Ors* (1999) (Case No 114 Tunku Sofiah's Malaysia Election Laws) 1892 where Azhar Maah J held that:

> I fully agree with the decision of Harun J in *Nobert Choong*'s case that it was imperative that the nomination papers must be submitted in triplicate, and there's no two ways, about it. That was the law at that time. However, with the introduction of para 6 of reg 4 into the 1981 Regulations the imperative and strict requirement of the old regulations has been neutralised. There is now a power rather than a duty given to the returning officer to reject any nomination papers, which do not fully comply with the regulation, depending on the circumstances and merit of each case.

[10] This new reg 4(6) which reads:

> Failure to comply with subregulation (3), (4) or (5) shall render the nomination paper liable to be rejected by the returning officer [subs PU(A) 67/04].

confers a discretion on the returning officer to accept or reject papers that do not comply with reg 4(3), (4) or (5).

[11] This issue had been dealt with by Azmel Maamor J in *Hussein bin Ahmad v Tengku Razaleigh b Tengku Mohd Hamzah & 3 Ors* (1995) Case No 92, Tunku Sofiah's Malaysia Election Law 1550 where the learned judge held that:

> In this para (6) I agree with the submission of Dato' Zaki when he said the words 'liable to be rejected' makes it not mandatory for the returning officer to reject the nomination paper. From the manner it is worded the returning officer is given a discretion whether to reject the nomination paper or otherwise.
>
> (at p 1552)
>
> In my view the spirit and intention of reg 4 read together with reg 28 of the Elections (Conduct of Elections), Regulation 1981 is for the returning officer to be more favourable towards accepting nomination papers rather than rejecting them. I hold this view because the proviso to para 6 gives three instances where it becomes mandatory for the returning officer to accept the nomination papers even with the existence of errors. Likewise reg 28 makes it compulsory for the returning officer to accept the nomination paper even though it contains certain errors.
>
> The rejection of nomination papers by the returning officer under para (6) in respect of errors contained in paras (3)(4) or (5) is not mandatory but discretionary. Such discretion must be exercised judiciously.
>
> (at p 1553).

[12] Regulation 28 further reinforces reg 4(6A) with respect to any 'error'. Error under reg 28 had been defined to include omission. Here the omission by the first respondent was to sign the other two copies of her nomination papers.

[13] The signature of the first respondent on the first copy expressly signifies her intention to accept the nomination. The fact that the first respondent came personally to submit her nomination papers along with her proposer and seconder also expressly signifies her intention to accept the nomination to contest as a candidate for the constituency (see para 4 of the *afidavit sokongan* by the second respondent — *lampiran* 11).

[14] One copy of the nomination paper is completely and correctly filled up whilst the other two copies were not signed by her. Therefore the defect alleged cannot be of substantial nature and become an obstacle to an otherwise good and proper election under reg 4(6A). The second respondent is entitled to look at the nomination paper that is correctly filled up to identify the defect and determine whether that defect is substantial in nature or otherwise. The second respondent found the defect to be merely technical and of no consequence as one of the nomination paper is completely and correctly filled up (see paras 15, 16 and 17 of the second respondent's *afidavit sokongan* (*lampiran* 11).

[15] In *Wong Chong Sang v Nga Kor Ming & 2 Ors* (Federal Court Civil Appeal No 01–24 of 2004(A) the Federal Court held that:

> In any event, there should be no restriction on the part of the returning officer in looking at the other two copies of the nomination paper which had been correctly filled up by the first respondent. As the law requires the nomination paper to be filed in triplicate, it must mean that the three copies form part and parcel of the whole nomination paper. *As such, it is reasonable to expect the returning officer to examine them contemporaneously. Thus, in a situation such as the present where one of the three copies was found to be defective, the returning officer should be allowed to look at the other two correct copies in order to identify the defect*. Given the peculiar factual circumstances, the said defect cannot be regarded as substantial in nature and therefore should not become an obstacle to an otherwise good and proper election process. That being the position, the second respondent was correct in law and on the facts in rejecting the objection raised by the appellant on this score'. (Emphasis added.)

[16] The mandatory supporting documents presented together with the nomination papers are in themselves very cogent evidence that the first respondent had consented to her nomination as a candidate for the constituency. The supporting documents are:

(i) the receipts from the state election office as deposit of being a candidate for a parliamentary seat and as deposit for election campaign materials (see exh 'MG4' to *lampiran* 11).

(ii) 'Surat Akuan Berkanun' which was affirmed, signed and stamped by the first respondent declaring her eligibility to be elected as a member of the Dewan Rakyat (exh 'MG–5' to *lampiran* 11), and

(iii) The 'Surat Menggunakan Simbol Dacing' atau 'Neraca' (exh MG–6 to *lampiran* 11)

[17] The petitioner alleges in paras 5 and 6 of the petition that the wrongful acceptance of the nomination paper as pleaded in paras 4,1, 4.2, and 4.3 had deprived Dr Haji Khairuddin bin Dato' Haji Abdul Malik his right to be returned uncontested.

[18] Even assuming for a moment that the second respondent had wrongfully accepted the nomination papers, such non-compliance would not affect the result of the election and therefore the requirements of s 32(b) of the Election Offences Act 1954 ('the Act') would not be satisfied.

[19] The Federal Court in *Wong Chong Sang*'s case had cited with approval the observations expressed by Ismail Khan J (as he then was) in *Isahak Hamid v Mustapha* [1965] 2 MLJ 18 at p 21:

Applying the above principle, can it be said that the failure of the returning officer to reject the nomination papers of the respondent resulted in a situation where it appears that the election was not conducted in accordance with the principles of the election law? The word 'election' to my mind comprises the many steps in the process whereby a candidate is returned from the issuing of a notification calling an election up to the declaration of the results. Nomination of a candidate is only one such step in this process. In this case, it is true that through the returning officer's improper acceptance of the respondent's nomination papers, the respondent was allowed to go to the poll and was elected. But there was a free contest between the respondent and the petitioner with the result that the former polled a majority of votes. No allegation of corrupt motives on the part of any election official or improper practices is made in this case. The petitioner's only complaint is the non-compliance of the returning officer with one of the provisions of the election law, viz, reg 4(3). It is not suggested that the method of voting was not by ballot or that the majority of the voters had been prevented by corruption, coercion or undue influence or through lack of the necessary facilities from voting freely according to their preference. Nor is any complaint made of a fraudulent counting of votes or a violation of the secrecy of the ballot.

It is true that in the *Haverfordwest* case (1874) LR 9 CP 720, an election was held to be void as the returning officer had improperly refused to notice the nomination of one of the only two candidates for an election of a member for a borough to Parliament. There Brett J said:

> The determining whether one or two candidates are put for election is a matter which goes so entirely to the substance of the election that what the returning officer did in refusing to take notice of Mr Davies' nomination vitiates the election.

That is a case of an improper rejection of a nomination, not as it is here the improper acceptance of a nomination. There is an important distinction between the two. In the former the whole constituency was deprived of its right to vote for a candidate who was legally entitled to go to the poll. In the latter the two candidates were put up for election and everyone of the electorate had a chance to vote for the candidate of his choice.

These considerations lead me to the conclusion that despite the transgression of the law by the returning officer the election in this case had substantially been conducted in accordance with the principles of the law. I also hold that the non-compliance of the law by the returning officer had not affected the result of such election, that is, the success of one candidate over the other.

[20] In my view the principles propounded by Ismail Khan J have equal application to the instant case which concerns an alleged improper acceptance of the first respondent's nomination paper for breach of reg 4(3) and (5).

[21] In the circumstances, the alleged transgressions of election laws as pleaded in the petition, even if true, as claimed by the petitioner would not affect the result of the election as the mandatory requirement s 32(b) of the Act had not be satisfied.

[22] It is also my considered opinion that the facts and grounds stated in para 4.1 of the petition does not fall within reg 7(1)(c) and 7(1)(d). It is obvious that both reg 7(1)(c) and (7)(1)(d) refer to the status of the candidate and not the status of a nomination paper. I agreed with SFC Amarjeet Singh that there is no allegation that the first respondent is not eligible to be a member of the Dewan Rakyat or is disqualified to be a member of the Dewan Rakyat as expressly provided under arts 47 and 48 of the Federal Constitution. A candidate may if he does not fill out his nomination normal paper properly have his nomination paper rejected but that does not mean that the candidate is not capable or is disqualified from being a member of Dewan Rakyat. Since the petitioner has failed to show a nexus between the complaints raised and the law alleged to have been transgressed, para 4.1 is defective and ought to be struck out.

[23] Regulation 7(1) and 7(5) read with s 32(b) of the Act contemplates that there was an objection raised that comes within the ambit of reg 7(1) and that the second respondent made a decision overruling the objection and in doing so did not comply with a provision of law relating to nomination paper. It is therefore incumbent on the petitioner to show that (a) an objection was raised; (b) state the paragraph in reg 7(1) that the objection falls within; (c) state that the returning office overruled the objection; and (d) show the non-compliance with some provision of law relating to nomination papers that was not complied with by the returning officer when he made that decision.

[24] In para 4.2 the petitioner merely states that the second respondent failed to use his power under reg 4(6) to reject the nomination paper of the first respondent because two out of three nomination papers did not bear the signature of the first respondent, but he failed to highlight any of the four requirements mentioned above.

[25] In the circumstances the petitioner has failed to show a nexus between the complaints raised and the first requirement of s 32(b) of the Act. In absence of the facts and grounds concerning reg 7(1) and 7(5) the petitioner has failed to satisfy r 4(1)(b) as there is no cause of action to sustain the prayers sought.

[26] In para 4.3 the petitioner merely alleges that second respondent himself failed to raise an objection under reg 7(3) against the nomination

paper of the first respondent although he knew that two of the nomination papers did not contain the signature of the first respondent. He then alleged that the second respondent did not prepare a written decision and written grounds for the decision as required by law. But he did not state which law.

[27] Both the complaints in para 4.2 and 4.3 put forth by the petitioner did not fall within any of the paragraph in reg 7(1). Failure of the second respondent to raise objections, prepare written decisions and prepare written grounds for those decisions are not provided for in reg 7(1). Regulation 7(1) is exhaustive and the petitioner cannot create new grounds not provided. Secondly, the petitioner has also failed to bring his factual situation under reg 7(5) which refers to decisions by the returning officer in rejecting or accepting objections. Therefore the petitioner has failed to show a nexus between his narrated facts and the provisions of law he alleges are transgressed. As such there is a failure to satisfy s 32(b) of the Act and consequently r 4(1)(b).

[28] In *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729 the Federal Court held that an election petition must not only narrate the facts complained of but must also relate the complaints with the election laws alleged to have been transgressed. The Federal Court upheld what was stated by the election judge:

> In *Wan Daud bin Wan Jusoh*, at p 388 para F left, Wan Yahya J (later SCJ) held that a petition under r 4 must not only narrate the facts complained of but must relate or associate the complaints with the provision of election laws the respondent is alleged to have transgressed.
>
> ...
>
> Since the facts do not relate or associate the complaints with the provision of election laws alleged to have been transgressed, there is undoubtedly a failure to comply with r 4(1)(b) (at p 744).

[29] The Federal Court further held that:

> It is sufficient merely to say that s 32(b) is too clear for anyone to have any doubt that the election of a candidate may only be declared to be void on any one of the grounds provided therein. To avoid the election on ground (b) ie, of non-compliance with the relevant law, it must be proved that there was not only non-compliance but also that such non-compliance had affected the result of the election (at p 745).

[30] Finally, the contention of the petitioner that the election court has inherent powers to declare Dr Hj Khairuddin bin Dato' Haji Abdul Malik as the candidate that ought to be returned, is a prayer that is no longer open to

the election court as this relief was expressly deleted from s 35(c) of the Act by Act A1177 with effect from 16 January 2003. It is the express intention of the Legislature that the election judge no longer has the jurisdiction to declare an unsuccessful candidate as duly returned anymore unless the prayer is for a scrutiny under s 35(d) of the Act. In this case the petitioner is not asking for a scrutiny. Therefore by asking a prayer or relief that is no longer open, the petitioner has failed to satisfy r 4(3) which states:

> The Petition shall conclude with a prayer as for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, and shall be signed by all the petitioners.

[31] The petition can only conclude with a prayer that is allowed under s 35 of the Act and not any other relief, especially a relief sought to be derived from the inherent powers of the election court. The election court is a creature of statute and is subject to limitations imposed by statute.

[32] For the aforesaid reasons I hold there is a failure to satisfy s 32(b) of the Act and consequently r 4(1)(b).

The preliminary objection (i)

[33] By the above conclusion the preliminary objection (i) become academic. Be that as it may, I will deal with this objection briefly.

[34] To my understanding the complain in objection (i) is that the notice of the presentation of the petition and the petition (after this the said documents) was not served on the first respondent within 15 days of the presentation of the petition as stipulated by r 15. However, the submission of the learned counsel for the first respondent dealt very much on the issue of the mode of the services of the said documents on the first respondent, which I find is outside the ambit of their objection.

[35] As a fact I found that the affidavit of service (*lampiran* 14) clearly shows that the said documents was served on the first respondent personally on 6 May 2008 at the Parliament House but the first respondent refused to accept it.

[36] Affidavit of service (*lampiran* 15) had proven that the said documents have been served on the first respondent by way of AR registered post and acknowledged receipt on 2 May 2008.

[37] Both services were good as they were done within 15 days as stipulated by r 15(1).

[38] The next issue is the mode of service of the petition as required by r 15(1)(a) which reads:

> (1) Notice of the presentation of a petition, accompanied by a copy of the petition, shall, within fifteen days of the presentation of the petition, be served by the petitioner —
>
> (a) on the respondent personally which shall be effected by delivering the notice and a copy of the petition to the respondent.

[39] Learned counsel for the first respondent argued that the service of the said documents was bad in law as it was not served by the petitioner himself. With due respect I do not agree. The word personally in that rule refers to the respondent and not the petitioner. That rule requires the said documents to be served on the person of the respondent to ensure that the respondent knew the case against him. If the intention of the Legislature was that the petitioner himself has to serve the said document, r 15(1)(a) should read that the said documents '… shall ... be served by the petitioner himself on the respondent personally…'.

CONCLUSION

[40] Under s 32(b) of the Act, it is essential for the petitioner to not only plead non-compliance with the provisions of any written law relating to the conduct of any election but must also demonstrate that the alleged non-compliance caused the election to be not conducted in accordance with the principles lain down in such written law.

[41] It is essential for the pleadings to disclose that some principles pertaining to the conduct of the election had been breached. This is plainly not the case here. No principle of election law has been breached.

[42] Regulation 30(1) which stipulates:

> No election shall be invalid by reason of any failure to comply with any provision of these Regulations relating to elections if it appears that the election was conducted in accordance with the principles laid down in such provisions, and that such failure did not affect the result of the election.

clearly provides against invalidation of an election unless a principle has been contravened and if such contravention affected the result of the election.

[43] For the reasons aforesaid, I dismissed the petition. I hereby determine that Rafidah bt Abd Aziz was duly elected to the Perak Parliamentary

Constituency of P67 Kuala Kangsar.

COSTS

[44] If it was not for the silly mistake of the first respondent in not signing the other two copies of her nomination paper, this petition would not see the light of the day. I therefore ordered no costs against the petitioner.

Petition dismissed with no order as to costs.

Reported by Kanesh Sundrum